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STRETCHING THE CONSTITUTION—THE BALL RENT LAW DECISION.

The rubber in the Constitution of the United States has been stretched almost to the breaking point in many recent decisions. The fear that a Constitution formed one hundred and fifty years ago would be too rigid for future generations is wholly without foundation. This wonderful instrument has a marvelous elasticity which, without the necessity of much further amendment, will doubtless be able to accommodate itself to all future changes demanded by a "preponderant public opinion," to quote Mr. Justice Holmes, to whom without doubt goes the chief distinction of "liberalizing" the Constitution. The latest effort of this learned Justice in adjusting the Constitution to modern conditions is to be found in his opinion in the recent Rent Commission case—*Block v. Hirsh* (decided April 18, 1921).

Several weeks ago we discussed the decision in this same case by the Court of Appeals of the District of Columbia, which held the Ball Rent Law unconstitutional. *Hirsh v. Block*, 267 Fed. 614, 91 Cent. L. J. 459. We agreed with the decision of the Washington tribunal and are willing to go down with them under the five to four decision reversing the judgment of the lower court.

It is interesting to note that under this decision the Ball Rent Law is justified only because of a peculiar "emergency" existing at this time, an emergency which the Court says is "publicly notorious and almost a world-wide fact." The Court then proceeds to maintain the "general proposition" that "circumstances have clothed the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law."

The Court did not go into all the features of the Rent Law but declared that if a public emergency existed, even a private business might become charged with a public interest, and that if such interest was established, the sole question remained not whether such business could be regulated but whether the regulation was reasonable. On the question of the public interest the Court said:

"The fact that tangible property is also visible tends to give a rigidity to our conception of our rights in it that we do not attach to others less concretely clothed. But the notion that the former are exempt from the legislative modification required from time to time in civilized life is contradicted not only by the doctrine of eminent domain, under which what is taken is paid for, but by that of the police power in its proper sense, under which property rights may be cut down, and to that extent taken, without pay. Under the police power the right to erect buildings in a certain quarter of a city may be limited to from eighty to one hundred feet. *Welch v. Swasey*, 214 U. S. 91. Safe pillars may be required in coal mines. *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531. Billboards in cities may be regulated. *St. Louis Poster Advertising Co. v. St. Louis*, 249 U. S. 269. Watersheds in the country may be kept clear. *Perley v. North Carolina*, 249 U. S. 511. These cases are enough to establish that a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation. But if to answer one need the legislature may limit height to answer another it may limit rent. We do not perceive any reason for denying the justification held good in the foregoing cases to a law limiting the property rights now in question if the public exigency requires that. The reasons are of a different nature but they certainly are not less pressing. Congress has stated the unquestionable embarrassment of Government and danger to the public health in the existing condition of things. The space in Washington is necessarily monopolized in comparatively few hands, and letting portions of it is as much a business as any other. Housing is a necessary of life. All the elements of a public interest justifying some degree of public control are present."

On the question of the reasonableness of the regulation the Court discussed only the question of the requirement that tenants could not be dispossessed at the termination of their lease, but might continue under the terms of the old lease until the Rent Commission determined whether the increase asked was reasonable. On this point the Court said:

"The main point against the law is that tenants are allowed to remain in possession at the same rent that they have been paying, unless modified by the Commission established by the act, and that thus the use of the land and the right of the owner to do what he will with his own and to make what contracts he pleases are cut down. But if the public interest be established the regulation of rates is one of the first forms in which it is asserted, and the validity of such regulation has been settled since *Munn v. Illinois*, 94 U. S. 113. It is said that a grain elevator may go out of business whereas here the use is fastened upon the land. The power to go out of business, when it exists, is an illusory answer to gas companies and waterworks, but we need not stop at that. The regulation is put and justified only as a temporary measure. See *Wilson v. New*, 243 U. S. 332, 345, 346. *Fort Smith & Western R. R. Co. v. Mills*, 253 U. S. 206. A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

With all due respect to the august tribunal which rendered this decision we cannot but believe that it sets a dangerous precedent. It makes the police power greater than the Constitution and permits Congress to interpret the police power according to the preponderant public opinion. It seems to us that if this principle is carried to its logical conclusion the Fifth and Fourteenth Amendments are but "scraps of paper." Unless the Supreme Court is willing to set some bounds to the police power, unless they are willing to confine this extraordinary power of the law-making body to matters clearly affecting the public safety, health and welfare, then any man's property can be taken without compensation

whenever the majority sees fit to take it. Bolshevism could not ask for more.

We are willing to admit that a public emergency may be created by the lack of homes for the people but surely this condition is not remedied by keeping one tenant in and another out at the expense of the owner of the building and with no gain to society. Let Congress condemn property under the power of eminent domain, paying a reasonable price therefor, and let them erect buildings for the people to live in. The emergency described by the Court is not that rents are high but that buildings are scarce. It does not help this condition one particle to deprive the owner of property of his right to get what his property is worth under the operation of the inexorable law of supply and demand. On the contrary, it makes the conditions worse, since it destroys the incentive to build.

The public health is not served by keeping A in B's property and keeping C out. This is a purely private matter which concerns A, B and C only. If the law of supply and demand is allowed to operate C goes in and gladly pays the increased rent and A goes out. Under the rent law A stays in but C keeps on walking the street. Such a law clearly is designed to help A at the expense of B and C and therefore not only injures the greater number of people but keeps B from building more houses. In other words, without conferring any benefit upon anybody the law deliberately takes B's property and gives it to A without any compensation to B. That is nothing but political brigandage.

The dissenting opinion by Justice McKenna, concurred in by Justices White, Van Devanter and McReynolds is unusual in its intense expressions of surprise and alarm at the effect of this decision. They declare that the objections of the Constitution to such a law are so "explicit" that "specifications" of the "irresistible deductions therefrom" would require no expression "but for the opposition of those whose judgments challenge attention." Into what

serious state has our great court fallen when four of its members are willing to make such a criticism of the other five.

The dissenting opinion goes on to say that a law, which permits one person to disregard his contract and to retain property against the will of the owner and against his own agreement to return it, is "contrary to every conception of leases that the world has ever entertained, and of the reciprocal rights and obligations of lessor and lessee."

Justice McKenna goes on to show that if a law can extend a lease, it can compel a lease; and that if this can be done then the majority or those who temporarily have control of the Government can take the property of one class who have and turn it over to the other class who have not. "The efficacy of this," said Justice McKenna, "to afford homes for the homeless cannot be disputed."

The dissenting opinion then goes on to show that each class as it gains power will seek to relieve itself of burdens at the expense of every other class, and that this tends to divide the electorate into class groups with no Constitution to protect the individual who prefers to stand on his rights. One of these rights hitherto thought to be secured to the individual, is the right of property. But this right is utterly worthless if unprotected. If contracts can be nullified and one's property given to another without compensation of what value is the Constitution. Justice McKenna closes with the prediction that the legislature is now supreme and that this decision "practically marks the doom of the judicial judgment on legislative action."

We are not willing to take the pessimistic view of Justice McKenna although we recognize the serious consequences of this decision. The good sense of the people, however, will overrule this decision and it will soon be ignored and forgotten. The editorials of the leading metropolitan dailies

show that they express respectful regret that the Court was compelled by the exigencies of war to justify, even for a period of two years, such a clear overstepping of Constitutional safeguards of private property. The Court itself will ultimately see its mistake and return to the wise position taken in the case of *Ex parte Milligan*, 4 Wall. 2, so often relied upon during the late war to keep Congress within bounds where that Court said:

"The Constitution of the United States is a law for rulers and people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

NOTES OF IMPORTANT DECISIONS

SUIT FOR MONEY COLLECTED BY ASSESSMENT BY BENEFIT SOCIETY NOT A SUIT IN REM.—An interesting situation is disclosed in the recent decision of the New York Court of Appeals in the case of *Hanna v. Stedman, et al.* (decided March, 1921) 65 N. Y. L. J. 183. Defendants are the officers of an unincorporated benefit society. A member of the society died in Maryland, leaving distributees in New York and Maryland. There was a dispute over the question which of the distributees was entitled to the proceeds of the benefit certificate. The defendants have collected the death benefit (\$1,000) and being unable to determine to whom to pay it, filed an interpleader in the Supreme Court of New York, a court of general jurisdiction. There was personal service on the heirs in New York and service by publication on the heirs in Maryland. Judgment was rendered in favor of a son residing in New York and the money paid to him. Subsequently the widow brings suit in Maryland against the society securing service on a resident agent. The society set up the New York judgment, which, however, the Maryland court refused to recognize because the New York

court had obtained no jurisdiction of plaintiff by its order of publication. The present suit is in New York on the Maryland judgment. The situation which confronted the Court is thus stated by the New York Court of Appeals:

"The Maryland court which rendered in favor of plaintiff's assignor the judgment against defendant upon which this action is founded was a court of general jurisdiction with power to adjudicate such a cause of action as was then presented to it and it had jurisdiction of defendant by its personal appearance therein. Presumptively it had power to render a judgment defining the rights of the parties in respect of the certificates in controversy to which the courts of this state should give faith and credit as prescribed by the constitution. But the Maryland court which rendered that judgment also was confronted with this same obligation imposed by the Federal Constitution. There was pleaded as a defense to the action pending in it the judgment recovered by the present defendant in the first New York action wherein the Maryland plaintiff was named as a defendant and wherein a judgment had been rendered adverse to her claims to the moneys payable under the certificate. It was the duty of the Maryland court to give the full faith and credit required by the constitution to this judgment, and if it was indeed a binding adjudication upon the rights of the parties the court was prohibited from considering anew the question whether the Maryland plaintiff was entitled to the moneys payable under the certificates. But as has been stated, this obligation of the courts of one state to give faith and credit to a judgment rendered by the courts of another state is limited by certain principles defining the powers of the court rendering the first judgment. The fundamental and obvious limitation upon the power of the courts of one state to render a judgment binding upon those of another state is the one that the former shall have jurisdiction of the parties and of the subject matter upon which they have pronounced an adjudication, and, as a necessary corollary to this, that the courts of the state in which the first judgment is pressed as a controlling adjudication shall have the right to investigate and ascertain whether the court rendering the judgment did have such jurisdiction (*Pennoyer v. Neff*, 95 U. S., 714; *Cole v. Cunningham*, 133 U. S., 107.)"

The lower court held that the Maryland court should have given full faith and credit to the New York judgment since the New York proceeding was one in *rem* and binding on parties served by publication to the extent of the funds collected in New York. In reversing this decision the Court of Appeals held that a suit to collect money due on a benefit certificate is not a suit in *rem* even though the money is collected and raised for this purpose by assessment. On this point the Court said:

"The defendant under its certificates had incurred a personal liability to some one for given sums of money. That obligation constituted a personal claim against it. As a means of paying this claim it collected moneys by levying an assessment upon its members. The moneys thus collected, however, were not even kept in a separate fund, but were deposited in a general account called the beneficiary fund, wherefrom I apprehend all claims of this character were paid. Least of all were the claims of the beneficiary, whoever he might be, transferred from the defendant as an obligor to the fund which had been collected by it merely as a means and or the purpose of discharging the obligation. The claim of the certificate holder remained a personal one and not a right in or lien upon specific property.

"An action or proceeding *in rem* has for its subject specific property which is within the jurisdiction and control of the court to which application for relief is made. The action proceeds against such specific property and its object is to have the court define the rights therein of various and conflicting claimants. Jurisdictional control of the property affords the basis for service beyond its jurisdiction upon those who may be interested in its disposition. The result of such an action is a judgment which operates upon the property and which has no element of personal claim or personal liability. There is no authority so far as we are aware holding that an action of interpleader is one *in rem*, but exactly the opposite view has been entertained. (*N. Y. Life Ins. Co. v. Dunlevy*, 241 U. S., 518, 521, 522.)"

The defendant raised the further interesting point that the Maryland court had no right to go back of the finding of the New York court, that the proceeding upon which its judgment was based was an action in *rem*. This of course, in view of recent decisions of the Supreme Court of the United States, was clearly untenable, as the Court shows. The Court said:

"A court even of general powers cannot acquire jurisdiction merely by asserting it or determining that it exists. It cannot acquire jurisdiction of the person by asserting and finding his residence within the state when the undisputed facts conclusively show him to be a non-resident. And it cannot for the purpose of acquiring jurisdiction of a non-resident through service of the summons by publication assert and determine that the cause of action before it is of a character which permits jurisdiction by such service when the undisputed facts show conclusively that it is not such a one. The nature of the action in such a case is one of the jurisdictional facts and the court cannot determine in its favor the existence of jurisdiction when there is nothing to support such view (*O'Donoghue v. Boies*, 159 N. Y., 87, 97-99; *Risley v. Phenix Bank of N. Y.*, 83 N. Y., 318, 337; *Pennoyer v. Neff*, 95 U. S., 714, 721; *Thompson v. Whitman*, 18 Wall, 457, 463, 469; *National Exchange Bank of Tiffin v. Wiley*, 195 U. S., 257; *Haddock v. Haddock*, 201 U. S. 562; *Reynolds v. Stockton*, 140 U. S., 254, 254, 265.)"

PROCEDURE IN INCOME TAX CASES

The present income tax law without doubt affects more persons and business organizations financially than any other law on the statute books. During the year 1919, taxpayers filed 5,940,000 returns, and the number for the year 1920 will be larger. The receipts from income and profits taxes for the fiscal year 1920 were \$3,944,555,-737.93. This was 72 per cent of the total internal revenue collected for that period. It was 55 times the amount collected from income taxes for the fiscal year 1914, the first full fiscal year after the enactment of the Income Tax Law of 1913.

These statistics tend to remind lawyers of the important responsibility which they have in advising their clients on federal taxes. They are called upon to assist in the preparation of returns, and also to advise upon questions which arise subsequently to the filing thereof. It is my purpose to discuss certain questions of procedure which arise after the return has been filed. The discussion will include a description of the manner in which some of the offices of the Bureau of Internal Revenue operate.

It is the duty of the Commissioner of Internal Revenue to examine the return as soon as practicable after it is filed. If it appears that the correct amount of the tax is different from that shown in the return, the tax is recomputed. If the correct amount as recomputed is less than the amount shown in the return, the taxpayer is permitted to take credit for any excess paid or file claim for refund; but if the correct amount as recomputed is greater than that shown in the return, he will be called upon to pay an additional tax.¹

The corporation Tax Law of 1909 provides that in the case of refusal or neglect to make return, and in the case of false

or fraudulent returns, "the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained," and collect by summary assessment. It is held in *Elliot National Bank v. Gill*, 218 Fed. 600, that the above limitation applies to the time of discovery, and that collection by summary process can be enforced at any time, provided the discovery be made within the three-year period. It would seem that Congress intended that the assessment be made within three years after the return was due. The question has not been decided in the Supreme Court. The point is very important in view of the fact that the Revenue Acts of 1913, 1916 and 1917, contain similar provisions. The Bureau evidently considers that the above decision does not settle the question, inasmuch as since March 1, 1920, taxpayers have been requested to waive the statute of limitations against summary assessment for the year 1916. There is no statute of limitations against collection by suit under any of the above acts.²

The Revenue Act of 1918 provides that the Commissioner shall make assessments "within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the return was due or was made." This is the first instance of limitation against suit for income taxes since the adoption of the Sixteenth Amendment. There is no limitation against suit in case of false or fraudulent returns under any of the aforesaid acts.

As an indication of the magnitude of the work and the results accomplished by the examination of these returns, the following quotation is taken from the Annual Report of the Commissioner of Internal Revenue for the Fiscal Year 1920:

(2) *United States v. Grand Rapids, etc. Railway Company*, 239 Fed. 153; *U. S. v. Nashville, Chattanooga & St. L. R. R.*, 249 Fed. 678.

(1) Sec. 250 (b) Revenue Act of 1918.

"The great importance of the audit work of the Income Tax Unit is shown by the fact that additional taxes aggregating \$376,977,667.49 have been assessed during the year. With the prospective increase in personnel it is believed that the assessments to be made during the fiscal year 1921 may result in the collection of \$1,000,000,000 in additional taxes."

During the early years of the administration of the income tax laws, including 1917, all returns were forwarded to Washington for examination. Beginning with 1918, the collectors were authorized to conduct a preliminary audit of the individual returns of income not exceeding \$5,000. Taxpayers with income within this limitation may make adjustments of their taxes with government representatives in the local collector's office. These local audits and adjustments made thereunder, however, are subject to review by the Bureau of Internal Revenue at Washington.

The income Tax Unit of the Bureau of Internal Revenue has the responsibility of administering the income and profits tax laws. The audit or examination of returns is delegated to various divisions of the Unit. The Special Audit Division, until recently known as the Technical Division, audits all of the difficult and technical cases. It is subdivided into the following sections: Consolidated Returns, Special Assessment, Special Assignment, Natural Resources, Amortization, Inventory and Fraud. The General Audit Division, until recently known as the Internal Audit Division, audits returns of a less technical and less difficult nature. It is subdivided into the following sections: Manufacturing, Trading, Personal Service, Finance, Field Audit Review, and Personal Audit.

Sometimes it is deemed necessary to make a field examination of the taxpayer's books before his return can be audited properly. The Field Audit Division is ordinarily called upon; but in some difficult cases, the Special Audit Division sends its

own auditors to make the field examination. The field examiner sends his report to Washington after the completion of the field audit. It is then considered in connection with the office audit of the return. The taxpayer should request the field examiner to furnish him with a copy of this report. There may be some things in it of a confidential nature which cannot be furnished; but it is the duty of the examiner to comply as far as possible. If the request is not complied with, a letter should be written to the Commissioner of Internal Revenue, Washington, D. C., requesting a copy.

After the completion of the office audit by the Income Tax Unit, a letter is written the taxpayer advising him of the result of the examination of his return. Letters covering proposed assessments under \$5,000 are signed by Division or Section Chiefs; those involving larger amounts are signed by the Deputy Commissioner at the head of the Income Tax Unit, unless the amount is \$1,000,000 or more, in which case it is signed by the Commissioner. This is the Bureau's A-2 letter. It customarily states that a preliminary audit of the taxpayer's return, supported by a field examination (if such be the case) discloses that a certain amount of additional tax is due, or that claim for refund should be filed, specifying the amount. It also states that the taxpayer will be advised by the collector of his district when and where to pay the tax, provided, of course, an additional tax is due. The tax is not placed on the assessment roll prior to the expiration of thirty days after the date of the A-2 letter.

If the taxpayer desires to contest the proposed assessment, he should arrange a conference through the Conference Secretary, Income Tax Unit, Bureau of Internal Revenue, Washington, D. C., to take place before the expiration of this period. The conference is informal. The taxpayer, his attorney, and the government representatives sit around a table and discuss any questions that the taxpayer desires to raise.

The latter has the burden of correcting any misapprehension of the facts on the part of the Bureau representatives as well as arguing points of law. The Bureau may not be clear on some facts in the case. Doubtful points are construed against the taxpayer in the A-2 letter for the purpose of compelling him to "show his hand." An affidavit should be filed covering any new facts presented. It is advisable to file a brief also, outlining the taxpayer's viewpoint to the best advantage. Some questions may be settled at the conference; some may be taken under advisement and decided within the course of a few days. The ruling of the Income Tax Unit is issued in the form of a revision of the A-2 letter. The A-2 letter, original or revised, should not be confused with "notice" to pay the tax. The latter comes from the collector of the taxpayer's district. If the taxpayer is diligent, he will be able to have a conference with the Income Tax Unit, and also obtain a ruling before his tax goes on the assessment roll. This is the desirable situation, as it obviates the necessity of filing Claim for Abatement, unless the taxpayer deems it necessary to appeal from this ruling.

If the taxpayer is dissatisfied with the ruling of the Income Tax Unit, he may appeal to the Committee on Appeals and Review. This consists in writing a letter to the Commissioner, attention Committee on Appeals and Review, requesting the former to submit the case to the latter for review. This should be done not later than thirty days after the ruling is made. A succinct statement of facts which the taxpayer desires the Committee to consider should be attached to the letter, the same to be under oath. A brief may also be filed then or later, if desired. It should be kept in mind that taking an appeal does not operate to suspend the tax going on the assessment roll; therefore, a Claim for Abatement should be filed within ten days after notice received from the Collector. Inasmuch as a penalty of five per cent is imposed and additional interest becomes pay-

able on Claims for Abatement which are not bona fide, it becomes important to determine what portion of the tax the claim should cover. It should not cover more than is affected by the appeal.

Appeals are decided in the order in which they are filed. At the present time it takes about ninety days after taking an appeal before it is considered by the Committee. A hearing will be granted, provided it is requested in the appeal. If briefs are submitted, three copies, printed or unprinted, should be filed with the Committee at least three days before the date of the hearing. After due consideration of the case, the Committee makes its recommendation to the Commissioner. The action which the latter takes thereon becomes final. The income Tax Unit then disposes of the case in accordance with the action of the Commissioner. This consists in writing the taxpayer a letter giving the ruling, and also in notifying the collector what portion of the tax, if any, has been abated.

After the receipt of notice from the collector to pay the tax, there are two courses open to the taxpayer to contest the assessment. One is to file Claim for Abatement, the other is to pay the tax and file claim for Refund. A Claim for Abatement, Form 47, must be filed within ten days after notice and demand by the collector. If the claim is bona fide, the penalty of 5 per cent is avoided, and the interest is reduced from 12 per cent to 6 per cent on the amount ultimately payable. As a rule, the filing of the Claim for Abatement operates to suspend the collection of the tax; however, the collector must exercise due diligence to prevent the collection thereof being jeopardized. He may require bond of the taxpayer, and if he deems it necessary, he may collect the tax notwithstanding the filing of the Claim for Abatement, thereby leaving the taxpayer to his remedy of filing Claim for Refund.³

(3) Article 1032, Reg. 46.

A Claim for Abatement must be sustained by an affidavit of a person cognizant of the facts. It should be attached to Form 47, and must contain a full and explicit statement of all material facts pertaining to the claim. Sometimes a Claim for Abatement is filed to suspend the collection of the tax pending the determination of a question already before the Bureau. An instance of this character was given above in the case of an appeal from the ruling of the Income Tax Unit on an additional tax assessment. In other cases, the filing of the claim initiates the question. Under request a conference before the Income Tax Unit and appeal from the ruling of the Unit in the manner above described. When the final ruling is made, the taxpayer is informed by letter. The collector in due course notifies him to pay the unabated portion of the claim.

When notice of assessment is received, the question arises as to whether to file Claim for Abatement or Claim for Refund. The former should be filed, provided the taxpayer feels that he has a fair chance to succeed. This avoids the payment of the tax and the loss of interest during the time the government has the money. On the other hand, the tax should be paid at once, and a Claim for Refund, Form 46, filed, when the taxpayer feels certain that he will be forced to go into court ultimately for relief. The reason for this is that the time which it takes to get a ruling on the Claim for Abatement is saved; it results in avoiding the penalty of 5 per cent, which is imposed on claims not bona fide. The filing of a Claim for Refund is a condition precedent to suit regardless of whether a Claim for Abatement has been filed.⁴

(4) *James Administratrix v. Hicks*, 110 U. S. 272; *Hastings v. Herold*, 184 Fed. 759. *Rock Island, Ark. and La. R. R. Co., v. U. S.*, 54 Court of Claims 22.

A Claim for Refund must be filed within five years after the return was due. Sec. 252, Revenue Act of 1918. Suit may be filed in the court at any time within two years next after the cause of action accrued. Sec. 3227, R. S. The cause of action accrues at the expiration of six months after the Claim for Refund was filed with the collector, unless the claim is rejected sooner, in which case the cause accrues at the time of rejection.⁵

Conference with the Income Tax Unit and appeal to the Committee may be had in the manner above described. If a Claim for Abatement has been filed and the taxpayer has taken an appeal to the Committee, there is little likelihood that he will accomplish anything by going through the procedure again. The logical thing to do in such a situation ordinarily is to await six months after the Claim for Refund was filed, and then file suit to recover the tax paid.

The taxpayers may file Claim for Credit, Form 47A, for any income, war profits, or excess profits taxes paid in excess of the amount properly due. This excess may be credited against any other income, war profits, or excess profits taxes due from the taxpayer under any other return. It should be noted that credit for excess income, war profits, and excess profits taxes paid cannot be used as a credit against any other class of taxes paid.⁶

Suit to recover taxes may be brought in the District Courts of the United States against the Collector of Internal Revenue regardless of the amount involved.⁷ It may be brought only against the collector who collected the tax, and not against his successor.⁸ The United States may be sued in

(5) Sec. 3226, R. S.; *Schwartzchild & Sulzberger v. Rucker*, 143 Fed. 656.

(6) Section 252, Revenue Act of 1918; Articles 1034, 1035, Reg. 45.

(7) Par. 5, Sec. 24, 36 Stat. 1087; *Ames v. Hagar*, 1 L. R. A. 377; 36 Fed. 129.

(8) *Phila., Harrisburg & Pittsburg R. R. Co. v. Lederer*, 242 Fed. 492.

the District Court, when the amount involved does not exceed \$10,000.⁹ The Court of Claims also has jurisdiction of suits against the United States for recovery of taxes paid, regardless of the amount involved.¹⁰

It is quite well settled that taxes voluntarily paid cannot be recovered by suit.¹¹ Protest should be made at the time the taxes are paid in order to establish the foundation for suit.

The taxpayer cannot enjoin the collection of the tax.¹² In some cases the courts have permitted stockholders to enjoin the corporation from voluntarily paying the tax.¹³

Perhaps a few more suggestions may not be out of order. Taxpayers many times desire to know what action would meet with the approval of the Bureau before the action is actually taken. The policy of the Bureau, announced August 25, 1919, is not to answer inquiries on abstract matters except under the following circumstances:

(a) The transaction must be completed and not merely proposed or planned;

(b) The complete facts relative to the transaction, together with abstracts from contracts or other documents necessary to present the complete facts, must be given;

(c) The names of all the real parties interested (not "dummies" used in the transaction) must be stated regardless of who

presents the question, whether attorney, accountant, tax service, or other representative.

Many taxpayers make the mistake of coming to Washington to adjust their tax questions without arranging for a conference in advance. The Bureau of Internal Revenue extends every courtesy to taxpayers, but unless it is known in advance, the men whom it is necessary for the taxpayer to see may be assigned to other conferences. Furthermore, the government representatives should have sufficient time to prepare before the taxpayer comes.

WALTER E. BARTON,

Washington, D. C.

INTERSTATE COMMERCE—ENGINE REPAIRMAN.

PAYNE, AGENT, V. INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA ET AL.

(195 Pac. 81.)

(District Court of Appeal, Second District, Division 2, California. Nov. 26, 1920. Rehearing Denied Dec. 24, 1920. Hearing Denied by Supreme Court Jan. 24, 1921.)

Railroad employee, repairing engine in general shops, who while tapping its boiler, sustained an injury to his eye from a piece of steel blown from the exhaust of a compressed air motor operated by men working near him, held engaged at the time in work so intimately connected with interstate commerce as practically to be a part of it, so that the Industrial Accident Commission of the state had no jurisdiction to make an award under the Workmen's Compensation Act.

WELLER, J. This proceeding was brought to review the action of the Industrial Accident Commission of California in awarding compensation to one O. J. Burton for injuries sustained by him in the line of his employment under Walker D. Hines, Director General of Railroads, operating the Los Angeles & Salt Lake Railroad.

On February 1, 1919, when he received the injury, Burton was engaged in repairing engine No. 3673 in the general shops of the Salt Lake Railroad at Los Angeles. While tapping the boiler of the engine, a piece of

(9) Par. 20, Sec. 24, 36 Stat. 1087; U. S. v. Emery Bird, Thayer Realty Co., 237 U. S. 28.

(10) Sec. 145, Judicial Code; Rock Island, Ark. & La. R. R. Co. v. U. S., 54 Court of Claims 22; U. S. v. Kaufman, 96 U. S. 567; U. S. v. Savings Bank, 104 U. S. 728.

(11) Chesebrough v. U. S., 192 U. S. 253; U. S. v. New York and Cuban Mail Steamship Co., 200 U. S. 488; Abstract Realty Co. v. Maxwell, 206 Fed. 333; Herold v. Kahn, 159 Fed. 608.

(12) Sec. 3224, R. S.; Dodge v. Osborn, 240 U. S. 118; Louisiana v. McAdoo, 234 U. S. 627; Kohlhamer v. Smietanka, 239 Fed. 408; Snyder v. Marks, 109 U. S. 189; Strauss v. Abstract Realty Co., 200 Fed. 253.

(13) Dodge v. Woolsey, 18 How. 331; Hawes v. Oakland, 104 U. S. 450; Pollock v. Farmers' Loan and Trust Co., 157 U. S. 427; Brushaber v. U. P. R. R. Co., 240 U. S. 1; Stanton v. Baltic Mining Co., 204 U. S. 163.

steel, blown from the exhaust of a compressed air motor operated by men working near him, lodged in his left eye, causing the injury for which he was awarded compensation. This locomotive had been used several months for the exclusive purpose of hauling heavy freight trains in interstate commerce between points in the states of Nevada and California, on the main line of the railroad. On the 19th of December, 1918, it was placed in the shops at Los Angeles for general overhauling and the installation of a superheating apparatus to increase the steam pressure, whereupon it was the intention to return it to its regular service. It was estimated that this work would be finished about January 30, 1919, but owing to delay in delivery of necessary materials it was not actually completed until about February 21, 1919. After the repairs had been made the engine was given a trial for several days in the yards of the company at Los Angeles, in accordance with the usual custom, without cars attached. On February 25, 1919, it hauled a freight train from Los Angeles to San Pedro, and on the following day returned to Los Angeles with a similar train, a portion of the cargo in both instances being consigned to points outside of California. It was testified that the trip to San Pedro was a part of the process of "breaking in" after a locomotive had undergone extensive repairs. After this run to San Pedro, the engine was returned to the shop, remaining there until March 4, 1919, when it was sent out attached to a through freight train, and resumed its former run between Yermo, Cal., and Caliente, Nev., on the main line of the railroad, where it has ever since been used.

This rather elaborate detail seems essential to a thorough understanding of the facts which are uncontroverted. It is conceded that, if the Industrial Accident Commission of California had jurisdiction of the case, the award is just and proper in all respects. The sole question presented for our consideration is: Was the engine at the time of the accident, engaged in interstate commerce, within the meaning of the federal Employees' Liability Act (35 Stat. 65 [U. S. Comp. St. §§ 8657-8665])?

The answer to this simple proposition is rendered difficult by the apparent conflict of decisions of the various courts, federal and state, which have been called upon to apply the law to the facts in issue in particular cases. It is complicated by reason of the fact that no fixed rule has been established by the Supreme Court of the United States for the

application of the statute. It has held that each case must be decided in the light of the particular facts, with a view to determining whether, at the time of the injury, the employer is engaged in interstate business, or in an act which is so directly and immediately connected with such business as substantially to form a part or necessary incident thereof. *New York C. & H. R. Co. v. Carr*, 238 U. S. 260, 35 Sup. Ct. 780, 59 L. Ed. 1298. Where the employer is engaged in both intrastate and interstate commerce and the instrumentalities are used indiscriminately in both, the line of demarkation between the two classes of business is exceedingly difficult to trace. A resume of some of the decisions will serve to illustrate this point.

In the case of *Erie R. Co. v. Winfield*, 244 U. S. 170, 37 Sup. Ct. 556, 61 L. Ed. 1057, Ann. Cas. 1918B, 662, an employee was in charge of a switch engine which was used in switching cars about in the yard, especially to and from a transfer station; some cars containing interstate freight, others intrastate, and still others carrying both classes. After completing his day's work, he put his engine away and started to leave the yard. While crossing a track on his way out, he was struck by an engine and killed. It was held that, as his work was particularly interstate, and his leaving the yard was a necessary incident to his employment, he was at the time engaged in interstate commerce within the purview of the federal act.

New York C. R. Co. v. Porter, 249 U. S. 168, 39 Sup. Ct. 188, 63 L. Ed. 536, determined that a workman engaged in removing snow from tracks used for the transportation of interstate and intrastate commerce was entitled to compensation under the federal law.

In *Philadelphia, B. & W. R. Co. v. Smith*, 250 U. S. 101, 39 Sup. Ct. 396, 63 L. Ed. 869, the employee was the cook of a construction crew which was employed in repairing bridges at different places along the line. The court stated that as he was actually assisting the bridge carpenters by keeping their bed and board close to their place of work, he was engaged in interstate commerce.

Pederson v. Delaware, L. & W. R. Co., 229 U. S. 146, 33 Sup. Ct. 648, 57 L. Ed. 1125, Ann. Cas. 1914C, 153, decided that an employee who was carrying bolts to be used in repairing an interstate railroad, and was injured by an interstate train while performing that duty, was within the terms of the federal statute.

Shanks v. Delaware, L. & W. R. Co., 239 U. S. 556, 36 Sup. Ct. 188, 60 L. Ed. 436, L. R. A.

1916C, 797, enunciates the principle that a workman employed in removing and installing fixtures in a machine shop which is conducted for repairing locomotives used in both interstate and intrastate transportation is not entitled to the benefit of the federal act. The Court in its opinion says:

"The connection between the fixture and interstate transportation was remote at best, for the only function of the fixture was to communicate power to machinery used in repairing parts of engines some of which were used in such transportation."

In the case of *Chicago, B. & Q. R. Co. v. Harrington*, 241 U. S. 177, 36 Sup. Ct. 517, 60 L. Ed. 941, the workman was employed with a crew in switching cars of coal to sheds, where it was placed in chutes, thence to be used to supply coal to engines engaged in both classes of transportation. The Court held that he was not in interstate commerce, stating that—

"Manifestly there was no such close or direct relation to interstate transportation in the taking of coal to the coal chutes."

The above citations will suffice to indicate the subtle distinctions which have been drawn by the Supreme Court of the United States in interpreting and applying the federal Employers' Liability Act.

Coming, now, to the decisions of our own Supreme Court construing these authorities, we encounter a direct conflict which adds to the difficulty of reaching a satisfactory solution of the problem.

In the case of *Southern Pacific Co. v. Pillsbury*, 170 Cal. 782, 151 Pac. 277, L. R. A. 1916E, 916, the Industrial Accident Commission of California had assumed jurisdiction, under substantially the following facts: A workman named Ruth was repairing a switch engine, which had been withdrawn from service in the yard at Roseville Junction, Cal., where some 70 per cent. of the switching was interstate commerce work. While thus engaged, Ruth received injuries resulting in his death. The accident occurred during the time the engine was in the roundhouse undergoing repairs, and three days before it was restored to service. Our Supreme Court annulled the award, after discussing the decisions of the federal court, some of which we have cited. On May 21, 1917, without filing an opinion, the Supreme Court of the United States denied a petition for a writ of certiorari whereby it was sought to review the decision of the state court.

On January 8, 1917, the Supreme Court of the United States rendered an opinion in the case of *Minneapolis & St. Louis R. Co. v. Win-*

ters, 242 U. S. 353, 37 Sup. Ct. 170, 61 L. Ed. 358, Ann. Cas. 1918B, 54, from which we quote:

"The agreed statement is embraced in a few words. The plaintiff was making repairs upon an engine. This engine 'had been used in the hauling of freight trains over defendant's line, * * * which freight trains hauled both intrastate and interstate commerce, and * * * it was so used after the plaintiff's injury.' The last time before the injury * * * was on October 18, when it pulled a freight train into Marshalltown, and it was used again on October 21, after the accident, to pull a freight train out from the same place. That is all * * * we have, and is not sufficient to bring the case under the act. This is not like the matter of repairs upon a road permanently devoted to commerce among the states. An engine as such is not permanently devoted to any kind of traffic, and it does not appear that this engine was destined especially to anything more definite than such business as it might be needed for. It was not interrupted in an interstate haul to be repaired and go on. It simply had finished some interstate business and had not yet begun upon any other. Its next work, so far as appears, might be interstate or confined to Iowa, as it should happen. At the moment it was not engaged in either. Its character as an instrument of commerce depends upon its employment at the time not upon remote probabilities or upon accidental later events."

On the authority of this *Winters Case*, our Supreme Court, in *Hines v. Industrial Acc. Com.*, 192 Pac. 859, filed October 4, 1920, affirmed an award to one Brizzolara, under circumstances somewhat similar to those in the *Ruth Case*, supra. The finding of the commission in the *Brizzolara Case* was as follows:

"That at the time of said injury and death said employee was engaged in making repairs upon a switch engine, which had been temporarily withdrawn from service therefor. That, when in service, said switch engine was used in both interstate and intrastate traffic. That the evidence herein is insufficient to establish as a fact that the proportion of said interstate use exceeded or amounted to thirty per cent. of the whole."

After quoting from the decisions of the United States Supreme Court, the opinion proceeds to state that the ruling in the *Ruth Case* is at variance with the holding in the *Winters Case*, and that the *Ruth Case*, therefore, cannot be considered as controlling, notwithstanding that the *Ruth Case* was affirmed by the United States Supreme Court some four months after the *Winters Case* was decided.

Some of the other adjudications of our Supreme Court are illuminating upon this intricate problem. It has been held that a watchman at a railroad crossing used for both in-

terstate and intrastate traffic is engaged in interstate business while employed in keeping the track clear of obstructions in order to facilitate the passage of interstate trains. *Southern Pacific Co. v. Industrial Acc. Com.* (Rolfe Case) 174 Cal. 8, 161 Pac. 1139, L. R. A. 1917E, 262; *Southern Pacific Co. v. Industrial Acc. Com.* (Smith Case) 174 Cal. 16, 161 Pac. 1142. An electric lineman, employed in the removal of an overhead telephone wire which had fallen on the trolley wire used by a railroad for furnishing electric power for the operation of cars of the railroad's interstate and intrastate passenger system, was engaged in interstate commerce, as he was then engaged directly in removing an obstruction to the operation of an instrumentality in actual use for purposes of such commerce. *Southern Pacific Co. v. Industrial Acc. Com.* (Covell Case) 174 Cal. 19, 161 Pac. 1143.

The cases which most closely parallel the one we have under consideration are found in the decisions of the Circuit Courts of Appeals, and, though they are not expressions of the Court of last resort, nevertheless they may guide the action of the state courts in determining the applicability of the federal statute.

Law v. Illinois Cent. R. Co., 208 Fed. 869, 126 C. C. A. 27, L. R. A. 1915C, 17, was decided by the Circuit Court of Appeals of the Sixth Circuit. A boiler maker's helper was injured in the shops of the railroad company at Memphis, Tenn., while assisting the boiler maker in repairing a freight engine regularly used in interstate commerce. The engine was in the shop for what is called "roundhouse overhauling," and had been dismantled at least 21 days before the accident. Up to the time it was taken to the shop, it had been regularly used in interstate commerce, was destined to return thereto on completion of the repairs, and did so return the day following the accident. In the opinion holding the federal act applicable to the facts, the Court propounds the following pertinent interrogatories:

"Under the existing facts, can the length of time required for the repairs change the legal situation? If so, where is the line to be drawn? How many days temporary withdrawal would suffice to take it out of the purview of the act? And is it material whether the repairs take place in the roundhouse or in general shops? Is not the test whether the withdrawal is merely temporary in character?"

Further quoting from the opinion:

"As held in the Pederson Case, the work of keeping the instrumentalities used in inter-

state commerce (which would include engines) in proper state of repair while thus used is so clearly related to such commerce as to be in practice and in legal contemplation a part of it."

In the light of the decisions, we conclude that, at the time of the accident, Burton was engaged in work so intimately connected with interstate commerce as practically to be a part of it, and therefore that the Industrial Accident Commission of California had no jurisdiction.

Award annulled.

NOTE—Car and Engine Repairmen as Employees in Interstate Commerce. — The United States Supreme Court, in Minneapolis, etc., Co. v. Winters, 242 U. S. 353, 37 Sup. Ct. 170, passing upon the question whether an engine repairer was employed in interstate commerce, said: "This is not like the matter of repairs upon a road permanently devoted to commerce among the states. An engine, as such, is not permanently devoted to any kind of traffic, and it does not appear that this engine was destined especially to anything more definite than such business as it might be needed for. It simply had finished some interstate business and had not yet begun upon any other. Its next work, so far as appears, might be interstate or not. At the moment it was not engaged in either. Its character as an instrument of commerce depended on its employment at the time, not upon remote probabilities or upon accidental later events."

In *Central R. Co. v. Paslick*, 239 Fed. 713, the Court referred to the Winters case, and in following it, said: "If the repair of an engine in the intervals between its interstate occupations is not sufficiently close to commerce to be a part of it, the repair of a car, which moves only when the engine hauls it, is certainly no closer."

"Commerce would not continue without machine shops for the repair of cars and locomotives, but the courts have held that employment in the shops in which cars and locomotives which hauled interstate commerce were repaired, was not a part of interstate commerce. The erection and maintenance of the structures in which the instrumentalities of commerce are built, repaired and housed, the construction and repair of the instrumentalities of commerce, the procurement and placing for convenient use of the articles consumed in commerce, when they have relationship to interstate commerce are properly classified as work for interstate commerce and not as work in interstate commerce." *Erie R. Co. v. Collins*, 253 U. S. 77, 79.

It appears that the reported case is not in harmony with the settled rule of law promulgated in the Winters case, supra, although the Court cites and quotes from that decision. It will be noticed, however, that some of the authorities relied upon by the Court are cases from inferior courts decided prior to the Winters case. That such an employee is not engaged in interstate commerce, is supported by *Loveless v. Louisville & N. R. Co.*, Ala., 75 So. 7; *Central R. Co. v. Paslick*, 152 C. C. A. 547, 239 Fed. 713.

The work of employees so engaged must not be confused with that of men repairing cars

or engines in transit or temporarily delayed, such cars and engines being then actually in interstate commerce. Of the latter, this note was not intended to treat.

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

ADDENDUM TO No. 183. (January 27, 1921.)

Since the publication of this Answer, the attention of the Committee has been called to local rules in certain jurisdictions, guarding more or less completely against the dangers apprehended by the Committee in framing its answer. The Committee would not be understood to reprehend the attorney for following the practice where the rules of the Court having jurisdiction require full disclosure of the attorney's part, if any, in negotiating the settlement, of his connection with the party at whose instance the compromise is proposed and of the fact that he is to be paid by such party, and also provide for the protection of the infant's interests by the Court itself, or by an independent guardian *ad litem*, or by means of a Referee, or by any other means that will insure the adequate and impartial protection of the infant's interests, whether against the defendant, or against the parent whose claim for loss of service may be concurrently in course of settlement.

[Note.] Question 183 and answer were published in 90 Cent. L. J., 30.

QUESTION No. 198.

Insurance; Solicitation; Relation of Client; Relation of Third Person; Subrogation; Employment—Attorneys for insurance company, subrogated to the extent of loss paid to the rights of the insured, soliciting joinder of insured with their client in prosecution through them of the entire cause of action with compensation to them for services in such prosecution to both the insurer and the insured—Not improper; conditions indicated.—In the exercise of the rights of subrogation reserved in an insurance policy, the insurer having partially paid a loss (to the extent of its liability), takes an assignment from the insured of an interest to the extent of the amount paid in his right of action against a negligent third person for having caused the entire damage, for which

the insured has been only partially compensated by the insurer.

Assuming that only one action can be brought for the entire damage, is it the opinion of the Committee

(a) That the attorneys for the insurance company can properly request the assignor to join in the action as plaintiff so that the entire right of action may be prosecuted in the names of both of the real parties in interest:

(b) That the attorneys may, with professional propriety, stipulate with the assignor either upon their own initiative or at the request of the assignor for a contingent or other fee for their services to him payable out of his share of the recovery (they being also compensated by the insurance company for the legal services of it);

(c) That the attorneys may with professional propriety propose to the assignor, with the approval of the insurance company, that in lieu of prosecuting the right of action in the name of both parties in interest, the assignor shall further assign his entire remaining interest to the insurance company to enable it to prosecute the action in its own name, accounting to the assignor for his share of the recovery, after paying therefrom to the attorneys an agreed fee for their compensation for professional services in effecting such recovery (the insurance company compensating the attorneys for professional services to it in respect to its own share of the recovery.)

(d) Would it, in any of the cases suggested, be in the opinion of the Committee, professionally improper for the attorneys to couple with their request a statement (with the approval of the insurance company) that the company in case of an adverse judgment will pay the costs.

ANSWER No. 198.

In the opinion of the Committee, subdivisions (a) and (b) of the question should be answered in the affirmative if the fact of compensation from both insurer and insured is disclosed to both of them; the circumstances obviating, in the opinion of the Committee, any question of improper solicitation of employment. (See as to contingent fee Answer No. 141, 86 Cent. L. J. 87.)

Sub-division (c) Yes.

Sub-division (d) No.

As in all cases, if the attorneys for the insurance company represent both the company and the insured, they should be on their guard against the possibility of being placed in an

inconsistent position, and if at any time during the progress of the case the interests of the insurance company run counter to those of the insured they should at once advise the insured of such fact and request him to secure independent counsel.

QUESTION No. 200.

Employment (Inconsistent); Relation to Other Attorney; Relation to Client—Acceptance of employment by clerk of seller's attorney to advise buyer—continuance of employment to advise buyer, after dissolution of relation between clerk and attorney—Not necessarily improper—Conditions indicated.—A, a lawyer, is in the employment of B who is attorney for executors who are selling real estate. The purchaser, after the bargain has been made, consults the executors as to the advisability of retaining A instead of bringing in other counsel. With the approval of the executors and of B, the purchaser retains A. Before the matter is concluded B's employment of A ceases.

Is there anything unethical?

- (1) In A's accepting the retainer?
- (2) In A's continuing to act for the purchaser after the separation?

ANSWER No. 200.

In the opinion of the Committee, neither the acceptance of the retainer, nor the continuation of the employment under the circumstances suggested is necessarily improper, though the Committee does not commend the practice because of its obviously possible dangers. The consent of all interested parties indicates that each appreciates the effect of the employment, and is willing A should be so employed. A should understand that after his employment by the purchaser his sole professional relation in the matter is to the purchaser and that he owes to the latter the utmost good faith and the conscientious performance of the duty of attorney to client. He should not be deterred in this by his former relation nor by the fact that he continues to be in the employ of B; if by reason of either relation, or of any confidential information which he is not free to impart to the purchaser, he cannot do his full duty to the latter, he should decline the employment or relinquish it. Under no circumstances should he continue the employment by the purchaser if or after he knows or discovers that by reason of his former or existing relations, or any obligation they impose, he is not entirely free to do nor willing to do his full duty to the purchaser. The Committee is also of the opinion

that the employment should not be accepted unless all of the consenting parties appreciate the implications of their consent as above indicated.

HUMOR OF THE LAW

A young attorney had been appointed to defend a negro who was too poor to employ counsel. Eager for an acquittal, the young lawyer challenged several jurors, who, he said, might have a prejudice against his client.

"Are there any others?" he whispered to the negro.

"No, boss, but Ah wants you ter challenge the judge. Ah's been convicted undeh him seberal times, now, and Ah doan' wantner take no chances dis time."—*Lawyer and Banker.*

An eminent member of the bar in Missouri asked the local agent of a railroad for a calendar, which was graciously sent him, with the following effusion:

To "His Reverence,"

Whose head is like Heaven.

"There will be no parting there."

A Beautiful Spring Classic.

Intended to make J. Whit. Riley and Bill Dow jealous.

From—A "Bawl" Crank.

To—A "Bald" Fan.

Selah.

Dosage: To be taken weekly, on Sunday, during the baseball season, as per directions.

My legal friend,

With this we send

Some figures for your year.

The days in red,

It should be said,

Are those we hold most dear.

No fishing pool

Or Sunday School

Should claim the bright red color.

But we will hark

To "Pettit" Park

And help the rooters "holler."

Trenton, Mo., January 20, 1921.

Benediction. A. L. H.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

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1. **Army and Navy**—Moratorium Statute.—One who entered the military service of the United States months after property was attached was not entitled to a stay of an order, for sale to conserve the property, filed after his discharge from the military service, under Acts 37th Gen. Assem. c. 380.—*Studdt v. Trueblood*, Iowa, 181 N. W. 445.

2. **Attorney and Client**—Disbarment.—An attorney, who confessed that he was a theoretical anarchist, etc., should be disbarred, where it appeared that he aided in the distribution of a publication excluded from the mails, and participated in an attempt to obstruct the Draft Act (U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. 1919, §§ 2044a-2044k), for his acts tended to a disregard of the laws.—*In re Margolis*, Pa., 112 Atl. 478.

3. **Ratification**.—By taking possession of the land and laying the tracks, after executing a bond as provided by section 5407, Gen. St. 1913, a railroad company ratifies the action of its attorneys who signed and filed the petition for condemnation in its behalf.—*Northern Pac. Ry. Co. v. Pioneer Fuel Co.*, Minn., 181 N. W. 341.

4. **Bankruptcy**—Chattel Mortgage.—Under the law of Oregon a chattel mortgage given by a sawmill company and duly recorded on lumber to be thereafter sawed by the mortgagor and piled on land described held valid as against the trustee in bankruptcy of the mortgagor as to lumber which had been sawed and piled as designated and the piles marked with the name of the mortgagee, although the mortgagee had not taken actual possession.—*In re Pine Tree Lumber Co.*, U. S. C. C. A., 269 Fed. 515.

5. **Estoppel by Laches**.—An order authorizing a trustee to compromise a controversy held not subject to attack by a creditor after a delay of five years, on the ground that no notice of the proposed compromise was given, as required by Bankruptcy Act, § 58a(7) being Comp. St. § 9642a(7), where it is found as a fact that the compromise agreement was fair and made in good faith, and such creditor had actual knowledge of it at the time, and permitted it to be carried out by the adverse parties, to such

extent that they could not be restored to their former position.—*Petition of Baxter*, U. S. C. C. A., 269 Fed. 344.

6. **False Oath**.—The making by a voluntary bankrupt of oath to his schedules, in which it was stated that he had no property, when in fact he had a small amount of money, with which he paid the costs, and a small amount of household furniture, which he could have claimed as exempt, held not sufficient to constitute the offense of "knowingly and fraudulently making a false oath," within Bankruptcy Act, § 29b (Comp. St. § 9613, subd. [b]) which would bar his right to a discharge.—*Humphries v. Nalley*, U. S. C. C. A., 269 Fed. 607.

7. **Banks and Banking**—Recovery on Forged Check.—While a bank is presumed to know the signature of one of its depositors, and therefore cannot recover from a bona fide holder for value money paid by the bank upon a check to which the drawer's signature was forged, the rule does not apply where the undisputed facts show that the holder of the check by his negligence contributed to the success of the fraud practiced on the bank, which was itself free from fault.—*Hutcheson Hardware Co. v. Planters' State Bank*, Ga., 105 S. E. 854.

8. **Bills and Notes**—Accommodation Note.—Where an accommodation note was executed for the express purpose of giving the accommodated party an apparent credit on his indebtedness to the payee bank, and he was given credit on the indebtedness for the amount of the note, there was a sufficient consideration for the accommodation party's promise to pay.—*Enterprise Bank v. Lyles*, S. C. 105 S. E. 896.

9. **Extended Indebtedness**.—Execution of new notes and mortgage security therefor, upon surrender and cancellation of prior existing notes, held not to extinguish the indebtedness represented by the first note; the only effect thereon being to extend the time of payment.—*White v. Hulls*, Mont., 195 Pac. 850.

10. **Holder for Value**.—The holder of a negotiable promissory note, indorsed in blank and transferred to him in due course as part payment on a conditional sale note, is a "holder for value" and may recover thereon although subsequent to acquiring said note he repossesses the property for which the title note was given.—*Allen-Wright Furniture Co. v. Spoor*, Idaho, 195 Pac. 632.

11. **Law of Place of Delivery**.—The fact that checks issued by resident of a foreign country were in the form of checks ordinarily in use in this country, and not recognized in the country of the drawer's residence, and that the checks were negotiated in the form recognized in this country, does not estop the drawer from relying upon the law of the country where the checks were delivered, under which they were not negotiable, where there was no showing that the drawer had any knowledge of the law of this country regarding the negotiability of checks.—*Hennenlotter v. De Orvananos*, N. Y., 186 N. Y. S. 488.

12. **"Witness" Not Liable**.—If a person subscribed his name to a note as maker without qualification and without notice or knowledge on the part of the payee that he was only intending to witness the signature of the other maker, he would be bound as maker, but where he wrote the word "witness" before his name, and where the payee knew that he was receiving no consideration, and that he had been asked to sign the note merely as a witness, he was not liable as the maker.—*Figari v. Olcese*, Cal., 195 Pac. 425.

13. **Carriers of Goods**—Deviation from Route.—The fact that the carrier deviated from the route designated in the bill of lading did not relieve the shipper from demurrage charges imposed by the tariff for failure to unload within the prescribed time after arrival at destination.—*Minneapolis, St. P. & S. M. Ry. Co. v. Reeves Coal Co.*, Minn., 181 N. W. 335.

14. **Liability of Purchaser of Draft**.—A bank which purchased from the seller of a carload of produce a draft for the purchase price with the bill of lading attached did not thereby assume the contract of the seller so as to be

liable to the buyer which had paid the draft for defects in the quality of the produce.—*Merchants' Bank v. Pine Bluff Produce & Provision Co., Ark.*, 227 S. W. 603.

15.—**Limitation of Liability.**—In August, 1915, the express company received two trunks for interstate transportation. The trunks were locked and strapped, and their contents were hidden from view. The carrier did not ask or require the shipper to state the character or value of the articles in the trunks, or any of them, the shipper gave no such information, and the shipper did not dictate or suggest what the receipt given him should contain. The receipt contained an agreement limiting amount of recovery in case of loss. Held, the limitation was void, under the provisions of Act March 4, 1915 (38 U. S. Stat. 1196, c. 176, § 1 [U. S. Comp. St. § 8604]), which was in force at the time.—*Payne v. Adams Express Co., Kans.*, 195 Pac. 860.

16.—**Negligence.**—If railroad negligently delayed shipment of cattle, the damage to the cattle sustained by reason of being placed in the sun and in a bad ventilated place in railroad yard while waiting to be moved would be recoverable as an item of the damages, regardless of whether the railroad was negligent in the placing of the cattle at such particular place in the yards.—*Neeley v. Hines, Mo.*, 227 S. W. 650.

17.—**Negligence.**—Where, under a contract of shipment of animals, the carrier is liable for injuries to them resulting from its neglect of proper care, unless the animals are accompanied by the owner, or attendant in his employ, and the carrier transports the animals without an attendant, of which it has knowledge, the carrier is not relieved from proper care in transporting the animals, although it might have been if there was an attendant who if present would be bound to give the care, the neglect of which caused injuries to the animals, and this is so even if it was expected that the attendant would accompany information given him by the carrier's agent as to the time when the animals would be moved.—*Purity Farms v. Adams Exp. Co., N. J.*, 112 Atl. 334.

18.—**Carriers of Passengers.**—Elevators.—The operation of an elevator with the doors opening into it open while passing a floor is negligence.—*Parsons v. Eaton, Cal.*, 195 Pac. 419.

19.—**Loss of Baggage.**—Where a transfer company received a traveler's trunk, to be transferred from one railroad station to another, and delivered to the traveler a claim check therefor, upon which was printed a notice that in case of loss of the baggage its liability was limited to \$100, such limitation is not binding upon the traveler, unless notice thereof is brought to her attention under circumstances from which her assent thereto is to be implied.—*Stine v. Hines, Minn.*, 181 N. W. 321.

20.—**Commerce.**—**Safety Appliance Acts.**—A purpose on the part of Congress to give a right of action for damages to employees injured by reason of violation of the Safety Appliance Acts (U. S. Comp. St. § 8605 et seq.) is shown by Safety Appliance Act 1893, § 8, providing that any employee injured by any locomotive, car, or train used contrary to the statute shall not be deemed to have assumed the risk, and the provision of the act of 1910 that the penalty thereby imposed shall not relieve the carrier from liability for the death or injury of any employee, and the right of action so given or preserved cannot be impaired by the state, and hence is not impaired by the Workmen's Compensation Act.—*Ward v. Erie, N. Y.*, 129 N. E. 886.

21.—**Contracts.**—**Specifications.**—Measure of allowance to owner of country residence for contractor's failure to comply with specifications for plumbing work providing all wrought iron pipe must be well galvanized, lap welded pipe of the grade known as standard pipe of "Reading" manufacture, other pipe than Reading having been in fact used, held not the cost of replacement, which would be great, but the difference in value, which would be either nominal or nothing.—*Jacob & Youngs v. Kent, N. Y.*, 129 N. E. 889.

22.—**Corporations.**—**Foreign Corporation.**—Service of process on the president of a foreign corporation while temporarily sojourning in the state did not avail as a personal service on the corporation, and therefore could not support a personal judgment against it, the corporation doing no business in the state, and the president not being there to do any business for it.—*Haas-Phillips Produce Co. v. Lee & Edwards, Ala.*, 87 So. 200.

23.—**Liability of Officers.**—Where plaintiff agreed to advance money to a company, and the officers agreed to pay after maturity accounts assigned as security for the advancements, they became personally liable for the payment under such contract.—*Commercial Finance Co. v. De Martelly, Pa.*, 112 Atl. 447.

24.—**Executors and Administrators.**—**Insurance.** Agent Not "Trustee."—Insurance Law of 1913 does not make insurance agents who collect premiums trustees in the technical sense of the term, so as to entitle an insurance company to have a claim for premiums collected allowed out of the agent's estate as of the first class.—*California Ins. Co. of San Francisco v. Dudley, Colo.*, 195 Pac. 649.

25.—**Guaranty.**—**Continuing Guaranty.**—Defendant agreed with a third party to pay drafts drawn on him through a designated bank and gave to him the following letter evidencing such agreement: "You may inform the People's Savings Bank of your city that I will honor your drafts drawn on me, amount not to exceed five hundred dollars, if this will be of service to you." Held, that the obligation assumed by defendant was limited to the amount stated in the letter, and that the language employed did not create a continuing guaranty by defendant to pay drafts not exceeding this amount from time to time for an indefinite period.—*People's Savings Bank & Trust Co. v. Landstreet, Fla.*, 87 So. 227.

26.—**Direct Action.**—Where defendants guaranteed payment for goods sold to another and agreed that on failure to make payments plaintiff should be entitled to bring action directly against the guarantors without exhausting remedies against the debtors, a direct action without making the debtors parties was warranted, particularly in view of Comp. Laws 1917, § 6511, providing that persons severally liable may all, or any of them, be included in the same action at the option of plaintiff.—*John Scowcroft & Sons Co. v. Jouffias, Utah*, 195 Pac. 633.

27.—**Habens Corpus.**—**Custody of Children.**—Custody of children will not be taken from their mother merely because some third person can provide them with a better home, with larger opportunities for getting from day to day exercise and fresh air.—*Ex Parte Haines, N. J.*, 112 Atl. 613.

28.—**Insurance.**—**Autopsy.**—A provision in an accident policy of insurance providing for an autopsy after the body has been buried is contrary to public policy and void.—*United States Fidelity & Guaranty Co. v. Hood, Miss.*, 87 So. 115.

29.—**Coextensive Policies.**—Where two policies of insurance are partly coextensive as to the character and subject-matter of the risk assumed, but afford protection in common as to injuries to one particular class of persons when brought about by one particular cause, and where both contain inconsistent clauses, whereby each insurer attempts to limit its liability for a loss of that kind to excess insurance only, and provides that in such a case the other insurer is to be primarily, and it only secondarily, liable, and where effect can be given to only one or the other of these limitations without defeating the protection of the insured under both policies, the rule to be adopted is to require that the company, whose policy affords specific insurance so far as such particular risk is concerned, shall answer primarily for the loss.—*Hartford Steam Boiler Inspection & Ins. Co. v. Cochran Oil Mill & Ginney Co., Ga.*, 105 S. E. 856.

30.—**Intoxicating Liquors.**—**Quantity as Evidence.**—Where a large quantity of whiskey was taken from the possession of one who was subsequently charged with unlawfully importing

the whisky into the District, a small quantity of the whisky is as complete evidence of the offense as the entire quantity seized, so that only such small quantity can be retained by the officers for use as evidence in the prosecution. —*Hughes v. Falvey*, D. C. 269 Fed. 865.

31.—**Reed Amendment**—The Reed Amendment (Comp. St. Ann. Supp. 1919, § 8739a), making it an offense to transport liquor into a prohibition state, did not cease to be effective with the expiration of the period covered by the appropriation act.—*Wagman v. United States*, U. S. C. C. A., 269 Fed. 568.

32.—**Steamship**—Under National Prohibition Act, § 26, providing that, when intoxicating liquors transported or possessed illegally shall be seized, the officer shall take possession of the conveyance, and that on conviction, unless good cause to the contrary is shown, the court shall order a sale of the property seized, good cause to the contrary is shown by showing that the owner of the conveyance was wholly ignorant and innocent of the illegal use thereof, and a large iron steamship, with a large crew, is not subject to sale and forfeiture because members of the crew, without the knowledge of the owners and in dereliction of their duties, have illegally transported intoxicating liquors for their individual purposes.—*The Saxon*, U. S. D. C., 269 Fed. 639.

33.—**Landlord and Tenant**—Alteration of Garage.—Under a lease of a garage, whereby the lessee covenanted at its own expense to comply with and execute all lawful orders and regulations of the board of health, police department, and city corporation, the lessee was obliged to bear the expense of inclosing certain staircases with fire-resisting partitions, etc., required by the fire department as a condition to issuance of license to the lessee for a garage.—*Frank v. Sidney B. Bowman Automobile Co.*, N. Y., 186 N. Y. S. 402.

34.—**Reasonable Rent**—Under Laws 1920, c. 944, § 1, relating to a recovery of reasonable rent, regardless of agreement, the defense is not joint, but separable, and may either be that the rent is unjust, or that the agreement is oppressive; the statutory term "rent" including compensation to be paid to the landlord where the tenant holds over after the expiration of a prior written lease.—*Schaefer v. Ropes*, N. Y., 186 N. Y. S. 511.

35.—**Title to Premises**—In an action to recover possession of land, tenant cannot deny landlord's title to the premises, but where landlord not only seeks possession, but asks that title to the land be invested in him, the tenant is not estopped from disputing the landlord's title.—*Swift v. Ivery*, Ark., 227 S. W. 600.

36.—**Libel and Slander**—Privileged Communication.—Where an employee has been discharged, or severed his connection with the employer, the latter has the right to notify his customers of the cessation of the employment, and to state his reasons therefor; the communication being qualifiedly privileged, and the employer not liable as for libel so long as he has reason to believe his statements are true, and the language used is not so intemperate and malevolent as to show malicious intent to injure the employee, even though the statements are false as a matter of fact, unless the employee proves actual malice.—*Browne v. Pruden-Winslow Co.*, N. Y., 186 N. Y. S. 350.

37.—**Untrue Advertisement**—Where defendants published of plaintiff real estate agent, by way of advertisement in a newspaper, that there was absolutely no contract or connection between him and defendants, as he had advertised, when in fact there was an association between plaintiff and defendants, the publication was libelous of plaintiff, as tending to hold him up to public obloquy or contempt, and subjected defendants to an action without averment of special damages.—*Paul v. National Auction Co.*, N. C., 105 S. E. 881.

38.—**Licenses**—Occupational Tax.—Los Angeles City Charter, empowering city to license and regulate "any lawful business or calling," held to authorize city to tax persons practicing law, since the words "business" and "calling" include

persons following the professions, as well as those engaged at work of a more purely commercial nature.—*Ex parte Galusha*, Cal., 195 Pac. 406.

39.—**Mandamus**—Duties of Public Officers.—Urgent public duties cannot be avoided by a municipal officer by resigning from his office in such a way and manner as to prevent the selection and qualification of his successor and prompt performance of such duties; and he will be compelled by judicial mandate to perform them until his successor is legally elected or appointed and qualified.—*State v. Blair*, W. Va., 105 S. E. 830.

40.—**Master and Servant**—Course of Employment.—Injury resulting from an assault by a workman upon a fellow workman while the latter is engaged in the work of the master is an "accidental personal injury arising out of and in the course of employment" within the meaning of the term as used in section 1 (article 2) of the Workmen's Compensation Act.—*Stasmos v. State Industrial Commission*, Okla., 195 Pac. 762.

41.—**Course of Employment**—Injury while boarding train bound for working place held one "arising out of and in the course of employment" within Compensation Act.—*Central Const. Corporation v. Harrison*, Md., 112 Atl. 627.

42.—**Epilepsy**—A workman who had long been afflicted with periodical recurrences of epilepsy was seized with an epileptic fit in the course of his employment in a refining plant, but such epileptic fit was not traceable to his work, nor did his employment contribute in any measure toward bringing on such affliction. During his epileptic seizure the workman became unconscious and fell against some hot pipes and severely injured his back. Held, that the accident and consequent injury did not arise out of his employment but out of his affliction, and compensation for his injuries cannot be awarded against his employer.—*Cox v. Kansas City Refining Co.*, Kans., 195 Pac. 863.

43.—**Hours of Labor for Women**—A newspaper publishing company, engaged exclusively in printing and publishing a daily newspaper, though it employs machinery and mechanical labor in its operation, is not a "manufacturing nor a mechanical establishment," as such terms are used in the statute regulating the hours of labor for women. Laws 1919, c. 190, tit. 4, art. 2, § 5.—*State v. Crounse*, Neb., 181 N. W. 562.

44.—**Minor Employee**—Injury of the employee in the course of his employment in such case makes out a prima facie case of injury to him by negligence on the part of the employer.—*Mangus v. Proctor-Eagle Coal Co.*, W. Va., 105 S. E. 909.

45.—**Negligence of Railroad**—A railroad's locomotive fireman did not assume the risk of injury from explosion of a defective torpedo negligently placed and allowed to remain in his seat box.—*Myers v. Payne*, Mo., 227 S. W. 633.

46.—**Where the employee killed himself while possessed of an uncontrollable insane impulse, or while in delirium and frenzy, without rational knowledge of the physical consequences of his act, such insanity or delirium having been caused by pain resulting from diseased condition caused by the electric shock which he received in the course of his employment, his widow was properly awarded compensation, on the theory that, while his death was self-inflicted, his act was unintentional, on account of the delirium, and a result of the electric shock.**—*Lupfer v. Baldwin Locomotive Works*, Pa., 112 Atl. 458.

47.—**Municipal Corporations**—Void Contract.—Where a village contracts for a municipal improvement which it has power to make, but the contract is void because not made after competitive bidding as required by law, the village is obliged to pay for any benefit it receives through performance of the contract, not because of the contract, but because of a general obligation to do justice. The measure of recovery is not the value of material and cost of labor, but the amount of benefit the village re-

ceives.—*Fargo Foundry Co. v. Village of Callo-way, Minn.*, 181 N. W. 584.

48. **Negligence**—Box in Aisle of Store.—It is negligence for a store proprietor to leave a box in the aisle used by customers inspecting merchandise.—*Williams v. Liberty Stores, La.*, 87 So. 233.

49. **Officers**—An "Office" Is Not a "Property" Right.—An "office" is a legal right to exercise a public function or employment, the term implying a delegation of a portion of the sovereign power to the person filling the office, and so an office is not a property right, nor are the prospective fees the "property" of the incumbent.—*Olson v. Scully, Ill.*, 129 N. E. 841.

50. **Railroads**—Damages to Abutting Property.—An owner of property abutting on a street on which railway tracks were located, and who had switching connections with those tracks, has an adequate remedy at law by the recovery of damages for injury to his property caused by the removal of the tracks from that street, so that a bill to enjoin the removal of the tracks was properly dismissed.—*Armour & Co. v. City of Dallas, U. S. S. C.*, 41 Sup. Ct. 291.

51. **Receiver's Negligence**—If the receiver of a railroad or his agents negligently caused the death of a horse on the track, the railroad company was not suable therefor.—*Steele v. Booker, Ala.*, 87 So. 203.

52. **Reversion of Land**—An instrument, duly executed, contained the following language: "The East Omaha Land Company does hereby grant, bargain, sell and convey unto the said Omaha Bridge & Terminal Railway Company, its successors and assigns, for terminal and railway purposes and uses, the following described real estate." Held, that the phrase, "for terminal and railway purposes and uses," did not of itself limit the estate conveyed, or operate as an implied reversion in case the lands conveyed were devoted to a different use.—*Carr v. Miller, Neb.*, 181 N. W. 557.

53. **Stop, Look, Listen**—Whether a traveler should stop to listen and look at a railroad crossing, and how intently, how constantly, and how often he should listen and look in the exercise of the prudence of a reasonably careful man, depends on all the circumstances, and one of such circumstances is his rightful expectation that the railroad will sound the bell or whistle on approaching the crossing.—*United States Director Gen. of Railroads v. Zanzinger, U. S. C. C. A.*, 269 Fed. 552.

54. **Receivers**—Party to Litigation.—A receiver is a proper party to litigation to take property out of his possession, or seeking relief against his act, but he is not a proper party, much less an indispensable party, to litigation affecting property not in his hands, or asserting rights to property in his hands without disturbing his possession thereof.—*United States Mortgage & T. Co. v. Missouri, K. & T. Ry. Co., U. S. C. C. A.*, 269 Fed. 497.

55. **Replevin**—Stock Law District.—Replevin is purely a possessory action, and where, under the provisions of chapter 231, Laws 1882, creating a stock law district, a plaintiff has rightfully taken up and impounded stock which were running at large within said district and were trespassing upon her premises, and where the stock were by force wrongfully taken from plaintiff's possession, she may maintain an action of replevin to recover the possession of the stock.—*Moore v. Cunningham, Miss.*, 87 So. 112.

56. **Sales**—Conformity to Sample.—A contract for sale of bronze rods to be manufactured cannot be construed to require the rods to conform to samples submitted by seller, where the samples did not correspond with the specifications of the contract.—*Michigan Copper & Brass Co. v. Chicago Screw Co., U. S. C. C. A.*, 269 Fed. 502.

57. **Delivery**—Where the seller of a threshing outfit was told when the sale was made and again when a part of the outfit was delivered that the buyer had already obtained the job of threshing for certain customers with a definite amount of wheat to thresh, and, to induce the buyer to accept the part delivered, promised to make delivery of the rest of the outfit in a few days, the buyer was entitled to recover the usual

and ordinary loss on such job so far as it could be definitely shown with reasonable certainty as damages for delay and ultimate failure to deliver the balance of the outfit.—*Minneapolis Threshing Mach. Co. v. Bradford, Mo.*, 227 S. W. 628.

58. **Measure of Damages**—The measure of a purchaser's damages for defects in an engine delaying the harvesting of a potato crop was the difference between the market value of the crop as harvested and its value had the harvesting not been delayed, with interest from the date of the accrual of the cause of action until the date of trial.—*Southern Gas & Gasoline Engine Co. v. Adams & Peters, Tex.*, 227 S. W. 945.

59. **States**—Filing of Claims Against—Laws 1918, c. 603, conferring jurisdiction on the Court of Claims to hear, audit, and determine alleged claims of plaintiff company against the state for damages sustained by the company which in previously filing claims had not complied with Code Civ. Proc. § 264, required filing of claims within six months of its taking effect May 10, 1918, and the claims previously filed before passage of the act cannot be regarded as compliance with such condition.—*Cooper-Snell Co. v. State, N. Y.*, 129 N. E. 893.

60. **Street Railroads**—Change in Rates.—Where street railroad franchises are granted on the express condition that the railway should obey the railway law, including changes in rate of fare, prohibition will not issue to direct the Public Service Commission and the railway to desist from further proceedings on an application for permission to increase rates, in violation of Laws 1894, c. 252, afterwards altered by Laws 1886, c. 65, Laws 1890, c. 565, Railroad Law, § 181, and Public Service Commissions Law, § 5, subd. 3, and section 49, subd. 1, so as to permit such increase.—*O'Connor v. Public Service Commission Second Dist., N. Y.*, 186 N. Y. S. 390.

61. **Sunday**—Violation of Law.—A person can be held for a violation of Pen. Code 1911, art. 302, prohibiting operating of theaters, circuses, and other amusements on Sunday, under a charge for operating a theater on Sunday, whether the performance was a tragedy, melodrama, or comedy, and one violated such article when he operated a moving picture show, although the screen depicted war pictures entitled "Under Four Flags," forming a part of the publicity work of a committee selected by the President during the war.—*Hegman v. State, Tex.*, 227 S. W. 954.

62. **Telegraphs and Telephones**—Interstate Commerce.—Where a telegram sent to a point in the same state was transmitted through a route lying partly without the state, the telegraph company in so doing using the only practicable and customary route, the sender, on the company failure to deliver, could not recover the penalty of Burns' Ann. St. 1914, §§ 5780, 5781; the transmission being interstate commerce.—*Western Union Telegraph Co. v. Throop, Ind.*, 129 N. E. 875.

63. **Nondelivery**—Plaintiff was not damaged by nondelivery of a telegram sent him by a Texas corporation, accepting his offer to exchange land in Texas for property of the corporation, where, under the laws of Texas, the executory contract thereby created would have been wholly void.—*Jackson v. Western Union Telegraph Co., U. S. C. C. A.*, 269 Fed. 598.

64. **Validity of Stipulation**—A stipulation on the back of a telegraph blank, limiting liability of the telegraph company for mistakes, delays, or nondeliveries to the cost of the telegram, if an unrepeated message, and not more than 50 times such cost if a repeated message, is valid under Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.), as amended by Act Cong. June 18, 1910.—*Ryan v. Colorado Postal Telegraph Cable Co., Cal.*, 195 Pac. 645.

65. **Time**—Sunday.—The seventh paragraph of section 6424, Code 1915, interpreted, and held to authorize the filing of a claim against the estate of a deceased person one day after the expiration of one year after the issuance of letters testamentary, in case the last day of the year following the issuance of such letters falls on Sunday.—*O'Brien v. Wilson, N. M.*, 195 Pac. 803.